

**CITY OF MILPITAS
APPROVED**

PLANNING COMMISSION MINUTES

June 14, 2006

**I.
PLEDGE OF
ALLEGIANCE**

Chair Williams called the meeting to order at 7:00 P.M. and led the Pledge of Allegiance.

**II.
ROLL CALL**

Present: Ali-Santosa, Azevedo, Ciardella, Galang, Mandal, Tabladillo and Williams

Absent: None

Staff: Bejines, Carrington, Hom, Pio Roda and Williams

**III.
PUBLIC FORUM**

Chair Williams invited members of the audience to address the Commission on any topic not on the agenda, noting that no response is required from the staff or Commission, but that the Commission may choose to agendaize the matter for a future meeting.

There were no speakers from the audience.

**IV.
APPROVAL OF MINUTES
May 10, 2006**

Chair Williams called for approval of the minutes of the Planning Commission meeting of May 10, 2006.

There were no changes to the minutes.

Motion to approve the May 10, 2006 minutes.

M/S: Mandal/Ciardella

AYES: 5

NOES: 0

ABSTENTIONS: 2 (Azevedo and Galang)

**V.
ANNOUNCEMENTS**

There were no staff announcements.

**VI.
CONFLICT
OF INTEREST**

Assistant City Attorney Richard Pio Roda asked if the Commission has any conflict of interest on tonight's agenda.

There were no Commissioners that identified a conflict of interest.

**VII.
APPROVAL OF
AGENDA**

Chair Williams called for approval of the agenda.

Staff had no changes.

Commissioner Ali-Santosa requested that Agenda Item No. 2 (Santa Clara County Health Center Design) come before Agenda Item No. 1 (Use Permit Amendment No. UA2006-2).

Motion to approve the modified agenda.

M/S: Ali-Santosa/Mandal

AYES: 7

NOES: 0

**VIII.
CONSENT CALENDAR**

There were no items on the consent calendar.

IX. PRESENTATION

1. SANTA CLARA COUNTY HEALTH CENTER DESIGN:

Diana Whitecar, Economic Development Manager, presented the design of the proposed 60,000 square foot Santa Clara County Health center located on North Main Street at the 237 off-ramp and recommended that the Commission review and comment on the proposed health center design and direct staff to advise the City Council of their comments.

Peter Schlosser, Principal Architect with Anshen+Allen, presented a PowerPoint presentation on the Santa Clara County Health Center Design. He explained that there will be great improvements such as landscaping around the building, raised planters along Main Street with landscaping and trees and garden space along the northern edge of the building. The building is organized with a glass wall system that wraps around the 3-story rotunda that overlooks the garden space. The service support for the building is located at the western edge and there is an 8-foot high garden screen wall that screens the service vehicles and receptacles.

Commissioner Mandal asked if the project would have solar energy methods. Mr. Schlosser said they are not incorporating any solar energy devices from the standpoint of power generation or heating of water, but they are using daylight as a mechanism to reduce the overall artificial lighting loads of the building. Light fixtures inside the public spaces and the areas that would have direct access to daylight are on a daylight control system to take advantage of natural day lighting.

Commissioner Mandal asked how long would it take for the project to be completed.

Alex Gallegos, County's Project Manager, said the construction schedule would be 24 months for the health center itself and the parking structure is estimated at 12 months but the completion time would be the same for both projects. It is likely the contractor would utilize the parking structure parcel as staging for the first 12 months of construction and once the super structure for the health center are completed then to begin construction on the parking structure. Timeframe for design and bidding would be to complete design by the end of this year and go into bidding at the first part of 2007, assuming bidding goes well, the start would be in spring 2007.

Commissioner Ciardella asked if the County plans on installing colored concrete on the walkways going across the street since there are colored concrete along the south entrance.

Mr. Schlosser said that is a good idea and explained that the concrete is made up of two types – pre cast concrete wall clouding with a sparkling effect and cast in place architectural concrete which comprises all of the various planter walls which runs along Calaveras Blvd. There is also on site colored concrete paving that engages the City streetscape along Main Street.

Commissioner Ciardella suggested colored concrete along Main Street because he felt that most people coming off of Calaveras Road will be turning too fast and might have a hard time stopping at the stop sign. He is concerned about the safety of the patients and pedestrians.

Ms. Whitecar explained that there will be a traffic signal installed at the off ramp of Calaveras and Main street.

Commissioner Ciardella asked if the traffic light signal would accommodate the elderly or possibly the handicapped that are in a wheelchair. Ms. Whitecar said that she would recommend that to the traffic engineer.

Commissioner Tabladillo is concerned about all of the new buildings being constructed in the area and asked how will staff ensure that Main Street looks cohesive.

Ms. Whitecar explained that the Redevelopment Agency (RDA) will be selling the land that the health center is built on and from the beginning, the Planning Director has been involved in all of the discussions and the health center, along with the library has been designed together. The County doesn't have to bring the parking garage to Council for approval however it will be forwarded to Planning Staff.

Commissioner Tabladillo said it is very hard looking at this one project knowing there are other projects in the mix.

Chair Williams requested that staff provide an overview and construction timeline schedule of Main Street because there will be a lot of construction in the area which could effect business operations.

Mr. Williams said it would be a good idea to have updates on the Planning Commission agenda about Main Street improvements because the library project has broken ground, the Mid-Peninsula senior housing project is ready to break ground, and now the County health clinic project is moving forward. Mr. Williams said staff has worked with the County staff and felt they have done an excellent job for a public building that is going to be compatible with the library and Devries senior housing project because it is a fiscally responsible building but integrates well with modern architecture.

Commissioner Galang asked why is the rooftop design different compared to the Gilroy and Fair Oaks clinic. Mr. Schlosser said that the Gilroy clinic is a two-story building with a much larger roof area compared to Milpitas and Fair Oaks which have a much more compact footprint because both of the buildings are three story buildings. In the case of Milpitas, there is about a 20,000 square foot floor play. The amount of mechanical equipment that sits on the roof to support a building of this type is quite substantial. In the case of Gilroy, the rooftop is made of a series of penthouse blocks spread out across a much larger roof surface. In the case of both of Milpitas and Fair Oaks, the roof top is very full of equipment and have a much more rooftop singular containment. The roof material is made of a corrugated metal panel that has a very deep ribbed spacing to it, and is pleasing to the eye.

Chair Williams felt the County health clinic will enhance the area in keeping with the overall aspects as far as design, functionality and utilization for Milpitas residents and based on the questions and comments that have been made, would present to Council approval of the project.

Commissioner Galang asked if the medical services would be coming back to the Planning Commission. Mr. Williams said that the Disposition Development Agreement (DDA) would be forthcoming to the City Council in August.

Motion to approve the Santa Clara County Health Center Design to City Council with the Planning Commission's recommendations and comments.

M/S: Mandal/Azevedo

AYES: 7

NOES: 0

X. PUBLIC HEARING

**2. USE PERMIT
AMENDMENT NO.
UA2006-2**

Cindy Hom, Project Planner, presented a request for approval to add sales of all types of alcohol in conjunction with an existing convenience store located at 1491 South Main Street and recommended denial based on the findings noted in the staff report.

Chair Williams needed clarification about the packet that was distributed to the Commission prior to the start of the meeting.

Ms. Hom noted that the packet contained a letter from the principal from Zanker elementary school that is rescinding her letter of support from the application and also includes other letters from the surrounding neighborhood as well as additional petitions submitted by the applicant in support of the project.

Before the speakers spoke, Commissioner Ali-Santosa requested the proximity of his or her address with respect to the applicant's store.

Chair Williams introduced the applicant.

Aslam Ali, 1800 Rocky Mountain Avenue, Milpitas, owner and operator of Jerry's Market and Deli at 1491 S. Main Street, said that the neighborhood is becoming upscale and customers need certain expectations such as spirits. He asked that the Commission support their project.

Chair Williams opened the public hearing.

James Tidwell, 343 Manzanita Court, resident of the Pines for 32 years, said he really appreciates Jerry's store because it is very convenient and felt that Mr. Ali should be approved for a liquor license.

Norwayala, Milpitas resident, regular customer of Jerry's, said he supports Jerry's liquor license.

Mike Tucker, 1845 Blue Spruce Court, four-minute walk from Jerry's, said that Jerry's is a convenient market and there is no Safeway or Albertsons near the business and the nearest market is PW in San Jose. He felt that Jerry's is a well-served market and the family has a great reputation. He doesn't understand the concerns considering that the Palm's and the Mexican restaurant serve liquor right across the street. He is in support of the project.

Dave Tromwell, 62 Woodland court, resident of the Pines, supports Jerry's and felt that Mr. Ali is entitled to improve his business and should be given the opportunity to serve liquor.

Roger Washington, 1504 S. Main Street, lives across the street from Jerry's, has seen them evolve and felt it is a landmark for the community because everyone knows Jerry's. There is different management now and it is an upscale convenience store and he is in support of Mr. Ali getting his liquor license.

Carol Sidel, 121 Greentree Way, resident of the Pines, said the current owners are being very diligent, clean and neat and don't let people hang out. She felt that Dave and Busters has more problems than Jerry's deli. She is in support of the project.

James, 304 La Honda, lives by Curtner school and works for Yellow Freight off Montague Expressway, said that he drives by Jerry's every night and recalled how he went there one night with four lottery tickets and Mr. Ali was very busy and didn't even question that the tickets were worth \$25 dollars. He is in support of the project.

Tito, 1203 Calle Oriente, said that he used to live in his sister's house on Stellar Way in the Pines but has since moved. He said that Mr. Ali and his wife is a friendly couple and they are doing a good job in the community and even though he has moved, he still goes there to shop.

Liz McLaughlin, San Francisco, has friends that live in the Pines district, said that it is a lot more convenient for them to buy liquor at Jerry's and it is more absurd to walk all the way to Milpitas liquors. Also, Jerry's is safer than Milpitas liquors. She is in support of the project.

Kim Diaz, 1504 South Main Street, across the street from Jerry's, does not drink however she supports Mr. Ali all the way because he is fantastic.

Paul Molder, Pleasant Hill, is not a resident of the Pines however is considering moving to Milpitas. His business is located nearby and he frequents Jerry's 3 to 4 times a day and Mr. Ali is an honest businessman. He is concerned about what is going on in the community and felt that Mr. Ali should be given the opportunity to grow.

Mr. Farwell, 1504 South main street, across the street from Jerry's, supports Jerry's market and sees no reason why he shouldn't have his liquor license.

Greg Jampoli has serviced Mr. Ali's store for ten years and has watched him clean the store and has observed that the clientele has change. He felt that the City should give Mr. Ali an opportunity to grow.

Anwar Virani, 5141 Capriana Common, Fremont, said that he has known Mr. Ali for 15 years as a friend and fellow businessman. He understands the City's concerns about the negative impact, however Jerry's is no different than an Albertson's and other stores. He supports this project 100%.

Ann Bennett, 2151 Old Oakland Road, space 603, lives about four blocks from Jerry's, felt that the integrity of Mr. Ali's family would not allow anything negative to happen and it is the only store in the area that would serve hard alcohol. She is in support of the project.

Raul Gonzales, 1300 Sunrise Way, four blocks from Jerry's, strongly supports his request for a liquor license because every man should succeed in life as long as they are fair.

Tai, 38 Greentree Circle, lives right behind Jerry's market, opposes hard liquor. He feels unsafe and is afraid to walk in his backyard at night. When he first moved in it took him two days to clean out the trash and beer bottles and also people would be back there. He felt that liquor would add more problems, however he does admit that the owner has cleaned up the place. He is not in support of the project.

Mohsin Karini, 541 Hamilton Avenue, Milpitas, is a good friend of Mr. Ali. He said they are a very mature couple and run their business nicely. He is in support of the project.

James Lyons, lives in Santa Clara, however he owns and operates Healthworks Chiropractic at 182 South Main Street next door to Milpitas liquors. He said that he would rather drive to Mr. Ali's store because Milpitas liquors have bottles and trash in the back and also people loiter there. He felt that Mr. Ali has a cleaner area and that he is willing to add surveillance cameras. He is in support of the project.

Rosemary Fowler, 86 Lonetree Court, has no objection to the store however she objects to the sale of alcohol. She has seen syringes, bottles, loitering in the park, and children making drug deals. She has nothing against Mr. Ali however she objects to the project.

Willy Miller, 156 Lonetree Court, has no objection to Mr. Ali selling liquor and feels safe at his store. Him and his wife bicycle around the area and have never seen syringes. He goes to Mr. Ali's store to buy milk, medication and felt that Mr. Ali is very nice to seniors and children.

Mrs. Fe Aurelia V. Doyle, 80 Lonetree Court, has nothing against Mr. Ali. She has seen the park filled with broken bottles, condoms, liquor, bottles, beer cans and has been harassed by four men asking for money. She said that she got information from ABC licensing stating that Mr. Ali's license was suspended for selling alcohol to minor. She is not in support of the project.

Daniel Oliveras, 35 Greentree Circle, has known Mr. Ali for two years. He has four children of his own and can send them Jerry's without any concern. Mr. Ali has signs everywhere and is very responsible and deserves the opportunity to sell liquor.

Denise Perry, 45 Lonetree Court, lives five houses behind the liquor store, said that her house is the drop off point near Jerry's. There are syringes in the play area behind Jerry's and she won't park her car at the end of the street because she doesn't feel safety. She has nothing against Mr. Ali however she grew up where liquor stores were all over and felt it to be a safety factor. She felt that if people want liquor they could go to Beverages and More at the Great Mall. She is concerned about her daughter playing at the park because there are always coke cans and bottles. She is not in support of the project.

David Wong, 555 Clyde Court, Milpitas, owns and operates a business at the Great Mall. The first time he visited Jerry's was about eight or nine years ago, before Mr. Ali, and at this time, his experience as a consumer was not good and he stopped going there ever since. Three years ago, he had to make a PG&E payment and found out that Jerry's accepts payments and when he went there, he saw a dramatic change. The store was well lit, organized and professionally operated. As a business owner, he has received nothing but the best experience and is in support of the project.

Mike Novotny, 36 Greentree Way, lives directly behind Jerry's and would like the Commission to not allow Mr. Ali to serve liquor. He is not against Mr. Ali, however the type of business is not in a good location. He said there is noise, traffic, people parking in the middle of the road, crime, rapes, murder across the street, people climbing over the walls, young adults drinking beer, bottles and trash in his back yard. He felt adding liquor will not help any and is not in support of the project.

Robert Park, 363 Donahe, not close to the Pines, but a beer distributor at Mr. Ali's store. He has seen great improvements in the store, and felt that it is one of the cleaner stores with well-stocked merchandise. He is in support of the project.

Lauren Plum, 39 Greentree Way, lives 150 feet behind Jerry's, is opposed to the hard liquor license. He said that the neighborhood has taken a downturn. His house has been broken into and robbed twice and his car was broken into and robbed, all this in the past year and a half. After checking with the neighbors, three more robberies had occurred within three houses of his own home and the burglars missed his daughters by minutes. He is not in support of the project.

Debbie Lynch, 1799 Starlight drive, lives in the Pines, and has never seen Jerry's look as good as it does now. It is well kept and well ran. She doesn't think that them selling liquor will make drug dealers come and do more drugs and she thinks Mr. Ali deserves his license.

Janet Reid, 1279 Sunrise Way, lives in the Pines and goes to Jerry's every day for six years. She has never seen no wrongdoing or nothing illegal. She is in support of the project.

Molerio, 596 West Williams, San Jose, shops at Jerry's and felt that they are a great family. He doesn't see any drinking outside and felt that if there are any incidents outside, it is not Mr. Ali's fault. He is in support of the project.

Joe, 6098 McLaughlin Road, said that his company services over 300 stores a day and that Mr. Ali's store is very clean. When you go inside the store, there is a place to throw the trash and you can recycle in front of the store. He is in support of the project.

Dennis A. Smith, 500 Glenmoor Circle, lives about three miles from Jerry's. He spoke to the Executive Director of the Milpitas Chamber of Commerce, and she stated that since Mr. Ali has owned the store, she hasn't received a single complaint. He felt that Mr. Ali should be allowed to sell liquor because he is attempting to raise the image of the market and understands that the area will be going upscale. His vision is to provide a customer gourmet deli like a Trader Joe's and would like to see himself offering organic products and increase the number of fruits and vegetables. He is in support of the project.

Farad, 1043 6th North Avenue, Cupertino, said that Jerry's is ran from a good family and is very clean. He is in support of the project.

Frank De Smidt, past President of Milpitas Chamber of Commerce and Rotary club, stated that Mr. Ali is a standing member of the Chamber and an active member from the community and he is pleased that Mr. Ali wants to add an upscale store. Mr. De Smidt said that he received an agenda that was advertised for a public hearing and the recommendation is different than what is noted at the meeting. He asked if that will have an effect on the hearing tonight and the application.

City Attorney Richard Pio Roda said there is no effect on the notice and the agenda. The recommendation is simply a recommendation that the Commission may approve or deny. Per the Open Government Ordinance, changing the recommendation is fine. If staff had changed the nature of the bold text and the text that is not italicized, except for the applicant name and staff contact, then there might have a problem.

Commissioner Azevedo requested more clarification.

Mr. Williams said instead of continuing the application, staff had requested that the applicant go back to the Pines HOA. When staff met with the applicant, there were certain conditions he was willing to do such as close the store at midnight and even considering closing the store at 10 p.m. and other increase security measures. In staff's communication, these were things that the Pines HOA was not aware because this was in response to the first meeting. The Pines HOA declined to hear this item at their HOA meeting on Monday night, so staff had set up the recommendation in anticipation that the HOA may render support based on the change of conditions that the applicant was willing to modify as well as the support from the school district at which we received a letter today that they are rescinding their position in support of the application. So in light of the last 24 hours, many things have changed in terms of garnering support of the application so that is why staff is recommending denial of the application of this evening.

Commissioner Mandal asked if there is a plan for the applicant to meet with the HOA.

Mr. Williams explained said there were two HOA meetings. At the first meeting, the HOA did not oppose the application and at the second meeting, it was their annual meeting and more members were present and that is where they took a position to recommend denial of the permit. In response to that, staff met with the applicant and he indicated t that they would be willing to do more such as closing the store at midnight, chaining off the parking lot, adding additional security and having a six month probationary period. Staff wanted the applicant to have the opportunity to go back to the HOA so the applicant has a fair chance to address the HOA one more time with the change of operating conditions for him to address with the neighborhood.

Chair Williams continued with the public hearing.

Araceli Tapia, 1736 Starlight drive, lives a couple of blocks from Jerry's and mentioned that she was approached at her home and was asked to sign a petition for Jerry's to get a deli permit not a liquor permit. She felt that they were untrustworthy. She noted that Mr. Ali has just started cleaning up his store probably because he wants to get his license. She is here on behalf of the children. She doesn't do drugs or drink however she is concerned about the glass bottles and junior high kids loitering in the neighborhood. She is not in support of the project.

John Shields, 45 Lonetree court, lives 200 feet from Jerry's, oppose allowing liquor at Jerry's because he has seen people vomiting, urinating, and drug dealers in the area. He felt that liquor would only cause more problems. He is not in support of the project.

Mr. Morali, Fremont, frequents Jerry's because it is convenient. He is in support of the project.

Rob Mayer, 415 Gibbons Court, lives in the Pines, Vice President of the HOA, said that the board felt very intimidated by the number of people that Mr. Ali packed in at the last meeting and he doesn't like his tactics. He disapproves of the liquor permit because it does not fit in with the overall plan of the neighborhood.

Mr. Lalani, 130 Luring Drive, Fremont, said that selling liquor does not bring crime to the neighborhood; it is how an operator runs the business that is the difference. If that was the case, than big stores wouldn't sell it because it brings crime. He has known Mr. Ali for the last 20 years and Mr. Ali has two kids and he is very responsible and concerned about children.

Gail Jones, 212 Lonetree Court, lives at the opposite end of Jerry's. She walks to Jerry's at night and said that it is not well lit. If the lighting was better, then there might be fewer problems. She also suggested that Mr. Ali block off the entrance to the ally. The problems will be there regardless of alcohol because it is the people that cause problems.

Jerry Reese lives two blocks from Jerry's, said he has been working for Mr. Ali and he is a nice person and is a responsible storeowner. He supports the project.

Russ Bargstadt, 1307 Stardust Way, President of the HOA, said this is not about Mr. Ali being a nice guy it is that a portion of the clientele which chooses to buy alcohol from store end up in the common area along the sound wall, along the creek and the park. He took a walk with his daughter along the creek and they found beer cans and a young man hiding in the bushes drinking. He has been threatened before and felt that liquor would be a major nuisance to the neighborhood and as a representative of the HOA, he disapproves of the project.

Daniel Martinez, 2151 Old Oakland road, San Jose, said that he is in support of Jerry's because it is a convenience store and it would be nice if they sold liquor. Regarding the murder that was at the restaurant across the street that sold liquor. He is in support of the project.

Tom Mores, 1253 Stellar way, ten-minute walk to Jerry's, is opposed to the license because he felt that Jerry's is not in a good location because it is surround by businesses. He felt that if the only way Mr. Ali could improve his business by selling liquor then he is not running his business the right way.

Irene Johnston, 56 Lonetree court, said that she lives behind Jerry's in the middle of the block and said that if someone needs to buy liquor then they can buy it at the grocery stores. She also felt that the area will turn into skid row because there are kids constantly J walking and walking to the store drunk to buy more alcohol. She is not in support of the project because she wants the children to be safe.

Lori Ray, 1811 Fallen Leaf Drive, said that Mr. Ali has really cleaned up the place and doesn't oppose to Mr. Ali selling liquor. She agreed that Mr. Ali should add more lights to the back of his store.

Mr. Hussein, 351 Macintosh, Fremont, used to live in Milpitas at 172 Evening Star, has known Jerry's for 20 years and Mr. Ali took over he has made a significant improvement at the store, thinks that adding liquor to Jerry's will not effect the neighborhood but will add a convenience to the neighborhood. He is in support of the project.

Mr. Vawani, Kennedy Drive, Milpitas, has another house on Abel street, right behind Jerry's. He owns a 7-11 store and he knows what impacts the business has by not selling hard liquor. He said that there is crime in the neighborhood already, and if Jerry's sells liquor, won't make much of a difference. He is in support of the project.

Don Peoples, 529 South Main Street, President of Downtown Association, said that that Mr. Ali already sells beer and wine and should be able to serve alcohol. Jerry's deli is in a vibrant redevelopment area and there will be 3000 houses and more residents in the future. He would not like to see the store reduce its hours because it performs a vital service for the area. As an engineer, Jerry's deli is in perfect conformance with the zoning ordinance. He said that Mr. Ali is very responsible and is in support of the community. He strongly recommends that the Commission support his recommendation and expects that Mr. Ali will play an interactive role.

Robert Sylvia, 3984 Washington Blvd. Fremont, recently retired from the Alcohol Beverage Control, tries to look at the well being of the community to ensure that there will not be a negative effect to the community. From his experience, Mr. Ali has been effective in addressing concerns as this and he understand by living by the conditions, and failure to do so can result by administrative action by ABC.

Patricia Sanchez, 2151 Oakland Road, loves going to Jerry's because it is very convenient. She is in support of the project.

Elizabeth Hanley, 1120 Starlight Drive, grew up in the Pines, said she likes Jerry's store because it is convenient but doesn't see why they have to have a hard liquor license. She is not in support of the project.

Rick Warren, Berkeley, Attorney for Mr. Ali, there is one correction we wish to offer to the proposed conditions, presently have hours of operation from 6 a.m. to 2 a.m., and are proposing to staff to close at 11 p.m. as part of the conditional use permit. Heard complaints about trash and litter and Jerry's is willing to pick up litter twice a day and to pay the HOA to hire someone to pick up litter twice a day. Heard complaints from residents and homeowners, but until this process got started; Mr. Ali never heard a complaint from the residents. Now that he heard these complaints he is going to take care of the litter and the trash and is offering to install cameras because of safety concern.

Sally, 36 Greentree Way, lives behind Jerry's, and noted that the majority of people that are for the project do not live near Jerry's. She is upset because she received a late notification from staff about the HOA meeting that night and she had no time to attend and felt that rescheduling a meeting will not make much of a difference. Said that Mr. Warren said that the residents never told them about the problems is because in 2002 Mr. Ali applied for a liquor license and the residents had a petition against that. She said that he is proposing to clean the area behind Lonetree and that is not the only area that needs cleaning. She is not in support of the project.

John Jay, 542 South Main Street, said he is surprised because the police reports do not mention anything about finding syringes in the area. He is in favor of Mr. Ali getting a liquor license.

Close the public hearing

M/S: Mandal/Ciardella

AYES: 6

NOES: 1 (Azevedo)

Chair Williams asked if there is a representative from the Police Department and Mr. Williams said no.

Commissioner Ali-Santosa asked if a commissioner could ask a question to a member of the audience.

City Attorney Pio Roda said that after the close of the public hearing, according to the Milpitas City Council manual, which the Planning Commission follows, must engage in deliberation on the item.

Commissioner Azevedo was concerned because he felt that the Commission didn't get to question the audience.

City Attorney Pio Roda said the questions you may ask are either directed to staff or whether you may approve the conditional use permit or not. Whether you direct specific questions to the audience, I will leave that up to the Chair, it is not disallowed by the Open government ordinance, but I would caution that to engage with a back and forth dialogue with the audience is not part of the deliberation you are supposed to take into account your personal thoughts about what has been heard. You should only address what was addressed and stated at the public hearing according to what the recording secretary has

Chair Williams said that he has a concern and would like to talk to the member of the HOA.

Commissioner Tabladillo asked if the Commission has a specific question, can they address them to the Director for additional clarification, continue this item and bring it back to meeting at a different meeting and City Attorney Pio Roda said yes.

Commissioner Azevedo felt that the items should be continued to another time because he felt there were unanswered questions.

Further discussion ensued.

Commissioner Mandal said that he has a lot of questions because the quality of life is at stake for the people who live in the area. He is not clear about what happened at the HOA meeting and felt uncomfortable deliberating tonight.

Commissioner Ali-Santosa said he is concerned after reading some of the letters provided in the packet because he felt they were misleading. For example one of the letters written said, *"by allowing Jerry's Market to sell liquor, I can do all of my shopping and pay my PG&E bill at this store"*. The focus on the deliberation should be on the compatibility of land use, not opinions, not emotions, not speculation, but should be based on facts and data and evidence, by the people or stakeholders directly impacted such as the people behind the business. He has some concerns about allegations of wrongdoing and thinks the Commission needs to really take a hard look at that and doesn't think the Commission is ready to make a decision tonight. He also heard some unfairness about the notification process and thinks that needs to be addressed as well.

Commissioner Tabladillo wants to make sure that the Commission has the appropriate information and would also want clarification from the HOA. She is not ready to deliberate tonight.

Vice Chair Galang said that he has a question for the police department and would like them to attend the next time and Mr. Williams agreed.

Commissioner Ciardella said that he noticed on the right hand side of the building, if we close the parking lot that could eliminate problems there and if we can't do that, my questions is that if you go on the entrance on the right hand side, where there are trees there, are those people having problems with trash in their back yard, are the trees being used as a barrier for people using trash.

Mr. Williams said that people are having a problem, and in terms of staff's review of the project, ask Ms. Hom to observe her observation.

Ms. Hom noted that she did conduct a site visit on a clear day in April around 2 p.m. and did not observe any littering, empty bottles or drug paraphernalia.

Commissioner Ciardella asked if it would be a possibility to close the parking lot and Mr. Williams said that it is a recommendation in the staff report and couldn't close it permanently, would have to talk to the Fire department about that.

Commissioner Azevedo asked if staff were to continue this date when would it be and Mr. Williams said a month to go back to the HOA to make sure they have proper notification.

Further discussion ensued.

Commissioner Mandal asked if the residents received proper notice for Jerry's and is not clear because some of the owners said they did not know about the license.

Ms. Hom explained that the homeowners are stating that they didn't receive notice for the HOA community meeting on June 12th. It is not necessarily the public hearing this evening, but the meeting between the applicant and the HOA. Mr. Williams added that it was properly notice.

Chair Williams felt that a Police representative should be to clarify calls they received in regards to drug paraphernalia and also have staff meet with the HOA President and do a walk through of the site.

Commissioner Ciardella also suggested that HOA provide a log of incidences that they have had in the neighborhood.

Commissioner Tabladillo asked if staff could talk to the Recreation Department and see what kind of trash they pick up at the park.

Vice Chair Galang asked if the public hearing will be renoticed and Mr. Williams said yes.

Vice Chair Galang asked staff to provide the type of video surveillance will be used.

Motion to continue Use Permit Amendment No. UA2006-2 to August 23, 2006 and encouraged the HOA to meet with the applicant.

M/S: Azevedo/Ali-Santosa

AYES: 7

NOES: 0

**XI.
ADJOURNMENT**

The meeting was adjourned at 10:05 p.m. to the next regular meeting of June 28, 2006.

Respectfully Submitted,

Tom Williams
Planning and Neighborhood Services
Director

Veronica Bejines
Recording Secretary

APPROVED
June 14, 2006